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Supreme Court of the United States

OCTOBER TERM, 1949.

No. 408.

PETROS MALEURIS, CHRISTOS KAKOULIDIS, ATHANASIOS SARDIS, DIDNSIOS MBITROS, ZEPOS VORDONIS, KOST RAMFOS, EFSTRAZTIOS KORTESIS, DIMITRIOS KALOGERAS, DIMITRIOS ASPROGERAKAS, NICKOS SKIAFOS, LIBELLANTS-PETITIONERS.

versus

ANTHONY G. PAPADAKIS, AS OWNER, MICHAEL PILIAROS, HIS AGENT, LEONARDOS CAPPARIS, AS MASTER, ALL BEING INTERESTED IN THE OPERATION OF THE STEAMSHIP VIRGINIA, RESPONDENTS—CROSS-PETITIONERS.

ON OPPOSITION TO LIBELLANTS' APPLICATION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

RESPONDENTS' BRIEF IN OPPOSITION TO LIBELLANTS' PETITION FOR WRIT OF CERTIORARI.

The Steamship VIRGINIA has filed in this proceeding a cross-petition based upon the Court of Appeals opinion holding respondents liable for advances on prior voyages. We contend this was error, and is a separate and distinct question from those involved in the original petition.

STATEMENT

The steamship VIRGINIA is a steamship flying the flag of the Kingdom of Greece. She is owned and operated by citizens and nationals of Greece and is subject to the laws of that nation. The ten libellants are citizens and nationals of the Kingdom of Greece. (See Findings of Fact Nos. 1, 2, and 3, App. p. 21.) The libellants were employed on board the steamship VIRGINIA as members of her crew at the following places and times, and in the following capacities:

Name	*Place*	*Time*	*Capacity*
Maleuris	Newport News, Va.	Jan. 9, 1948	Wireless Oper.
Kortesis	Rouen, France	Dec. 16, 1947	Sailor
Moitros	Rouen, France	Dec. 16, 1947	Sailor
*Sardis	Philadelphia, Pa.	Aug. 5, 1947	Sailor
Asprogerakas	Philadelphia, Pa.	Sept. 16, 1947	Fireman
*Ramfos	Philadelphia, Pa.	Aug. 5, 1947	Sailor
Skiafos	Newport News, Va.	Jan. 13, 1948	Carpenter
Kakoulidis	Newport News, Va.	Jan. 13, 1948	Oiler
Kalogeras	Newport News, Va.	Jan. 11, 1948	Wiper
*Vordonis	Philadelphia, Pa.	Aug. 5, 1947	Sailor

*Sardis, Ramfos and Vordonis were aboard as supernumeraries at Marseilles, France, July 16, 1947.

Subsequent to their employment, and on January 15, 1948, the libellants as members of the crew of the steamship VIRGINIA commenced a round trip aboard the said steamship from Newport News, Virginia, to France, and Africa, returning to Newport News on or about March 15, 1948. (See Findings of Fact No. 6, App. p. 22.)

During this round trip voyage all of the libellants committed certain acts which the master of the steamship VIRGINIA considered improper. While the ship was in the Port of Nantes, France, libellants, with the exception of one Maleuris, went on a four hour sympathy strike in protest of certain arrests made by the Greek Government in Greece. While the ship was at St. Nazaire, France, the members of the Deck Department, Vordonis, Ramfos, Kortesis, Mbitros, Sardis and the carpenter, Skifas, refused to perform duties incident to the opening and closing of hatches and taking of stores aboard ship unless they were paid extra compensation. The members of the Engineering Department, Kalogeras, Kakoulidis, and Asprogerakas, refused to perform their work in the regular course of their duties although ordered to do so by the chief engineer, Petros Androulidakis. At the conclusion of the round voyage and upon the return of the ship to Newport News, all of the libellants with the exception of Petros Maleuris refused to perform their usual and customary work unless their demands for extra pay were met. (See Findings of Fact No. 7, App. p. 22.)

Because of certain acts committed by the libellants during the voyage, on the return of the vessel to Newport News the master of the steamship appealed to the chief of the Marine Department of the General Royal Consulate of Greece, whose office is located in New York, to conduct an investigation pertaining to the libellants in order to determine whether or not, under the Greek law, their actions would justify their discharge from the ship. This official sent Commander Michael O. Pyliaros, Greek Port Captain, to Newport News, where he boarded the steamship VIRGINIA on March 25, 1948, and conducted an investigation of the whole situation pertaining to the libellants. After his investigation Michael O. Pyliaros in his official capacity presented an order authoriz-

ing the master to discharge all of the libellants, with the exception of Petros Maleuris, for the following offenses:

1. Attempting to obtain financial advantage not allowed by the Greek laws.

2. Revolting against the command of the master and refusing to execute orders of the master and other officers of the ship.

3. Claiming payment for opening and closing of hatches, handling of provisions, and supplies, attending water gauges, etc., which payments are not allowed under the Greek law.

4. Making (engaging in) political strike.

5. Claiming bonus payments which had been cancelled by Collective Agreement of November 30, 1947.

Commander Pyliaros, in his order, stated that the dismissal was justified and that there was no obligation to indemnify the nine libellants under the Greek law as their acts were punishable by the disciplinary laws of Greece. (See Findings of Fact No. 9, App. p. #22.)

The tenth libellant, Petros Maleuris, was considered in a separate order and the master was given the unqualified right to discharge Petros Maleuris, but was required to tender to this libellant, along with the wages which had been earned, a sum equal to forty days' pay. This amount was fixed by the Port Captain Pyliaros as the legal indemnity payable to Maleuris under the Greek Law because of his discharge. (See Findings of Fact No. 10, App. p. 23.)

The findings and orders of Michael Pyliaros were published to all of the libellants, and all of them were tendered the amounts of wages due them, which tender included overtime. In addition, the libellant, Petros Maleuris, was tendered forty days' extra pay as an indemnity. The libellants refused these tenders, refused further work, and also refused to leave the ship upon the order of the master. (See Findings of Fact Nos. 10, 11 and 12, App. p. 23.)

As the result of the libellants' refusal to leave the steamship VIRGINIA, a possessory libel was filed by the owner of the vessel on March 30, 1948. However, the necessity for a decision on this possessory libel was removed by the fact that the libellants, pursuant to agreement of counsel, left the steamship VIRGINIA on or about April 2, 1948. In the possessory libel action the amounts which had been previously tendered each of the seamen, and refused by them, were deposited with the Court. Upon this deposit an order was subsequently entered on the seamen's motion directing the payment of the money deposited over to the seamen's proctors. (See Findings of Fact No. 14, App. p. 24.)

As the necessity for a decision on the possessory libel was removed by agreement, that action is not involved in this petition. Therefore, the portions of the appellants' brief dealing with the same should be disregarded.

On April 2, 1948, the libellants filed their libel in which the following claims were made:

1. Bonus for six months' service, $80.00 each.

2. Extra pay for removing hatch covers, etc., $100.00.

3. Conspiracy to discharge, $1,000.00 each.

4. Four months' pay plus the cost of transportation back to Greece under Article 361 of the Greek Commercial Code.

5. Respondents "plan to make" derogatory entries in libellants' seamen's books, $1,000.00 each.

6. Respondents "plan to withhold" seamen's books $1,000.00 each.

By interrogatories filed on April 22, 1948, the libellants called for the respondents to state every advance made to each of the libellants during the time that they were aboard the steamship VIRGINIA. The libellants also called for the respondents to furnish the wage accounts of each of the libellants

covering the entire time that they were aboard the said steamship. Exceptions to the interrogatories were duly filed by the respondents. The libellants did not insist on a Court ruling on the exceptions to the interrogatories as they were satisfied that the only advances made had been disclosed in similar proceedings filed simultaneously in the Circuit Court of the City of Newport News, Virginia. (See Excerpts from letters of District Judge, App. Respondents' brief in Court of Appeals, pp. 80, 81 and 82.)

In the depositions taken by the libellants and by the motion filed by the seamen in the possessory proceeding the libellants made claims for advances amounting to at least the sum of $3,550.00. This sum of $3,550.00 was deposited with the Court on May 21, 1948, without prejudice and "in order to obviate any penalties under Title 46 USCA, Sec. 596." The deposit was made with the reservation of the right to contest the claim of the libellants to all or any part of the sum so deposited. The records of Leonardis Capparis, master of the steamship VIRGINIA, beginning January 15, 1948 and terminating March 15, 1948 showed total advances to the libellants on the vessel's last voyage amounting to $1,650.00. The remainder of the advances claimed by the libellants are alleged to have been made on previous voyages. (See Findings of Fact Nos. 17 and 18, App. p. 25.)

On the day of the trial of this case in the United States District Court the libellants filed a supplementary libel in which the following claims were made:

1. The libellant seamen were compelled to leave the vessel and were arrested by United States Immigration Authorities, $1,000.00 each.

2. The respondent, Pyliaros, Greek Port Captain, made derogatory entries in libellants' seamen's books, $1,000.00.

3. The libellant, Nickos Skiafos, became ill as a result of his service aboard the steamship VIRGINIA and the respondents failed to furnish proper medical care, maintenance, cure, etc., $1,500.00.

4. The libellant, Christos Kakoulidis, became ill as a result of his service aboard the steamship VIRGINIA and the respondents failed to furnish proper medical care, maintenance, cure, etc., $2,000.00.

There was no evidence to support the claims made by the libellants in their supplemental libel, and the same was accordingly dismissed. (See Conclusions of Law No. 7, App. p. 25.)

The respondent, Michael Pyliaros, Greek Port Captain, was never served with process and never entered an appearance and as to this respondent the proceedings were also dismissed.

POINTS INVOLVED.

1. The greater part of libellants' claims depend upon questions of fact and the decision of the district Judge should not be disturbed.

2. Possessory libel action by owner for removal of seamen from vessel was appropriate and proper.

3. The Greek Consular Official, Michael O. Pyliaros, was a proper reviewing authority to review and investigate the complaints of the master and the actions of the seamen.

4. No long period service bonuses were due any of the libellants upon their discharge from the steamship VIRGINIA.

5. All of the libellants were discharged with ample cause with the exception of Petros Maleuris. Maleuris was paid the amount due him under the Greek Law.

6. The advances claimed by the libellants beyond the current voyage were not paid to them in contravention of title 46, U. S. C. A. Sec. 599.

7. No penalty can be imposed on advances, bonusses or indemnities.

ARGUMENT.

1. The Greater Part of Libellants' Claims Depend Upon Questions of Fact and the Decision of the District Judge Should not be Disturbed.

By referring to the libel and supplementary libel filed in this case we find various claims aggregating approximately $55,000.00, plus additional wages and costs of repatriation to Greece, and in addition about $3,500.00 for advances. There was a great mass of evidence taken upon the varied and numerous charges with the usual conflicts that are met with especially in seamen's cases.

No rule is better settled than that the decision of the District Judge on questions of fact, unless clearly and obviously an error, should not be disturbed.

For the greater part of libellants' claims, the foundation is one of fact rather than one of law, and we refer to the findings of fact of the District Judge, printed as an appendix to this brief, as well as to his opinion for a thorough statement of the contentions made and the evidence adduced. We submit, therefore, that as to all of these claims, with the exception of the claim for advances on voyages prior to the last voyage, this Court is not justified in wading through the tremendous amount of conflicting testimony, and that the decisions of the Court of Appeals for the Fourth Circuit, and the District Court, should not be disturbed. *Maleuris et als* v. *S/S VIRGINIA*, 1948, A. M. C. 1721, (E. D. Va.) 175 F. 730, 734 (CCA. 4.)

2. Possessory Libel Action by Owner for Removal of Seamen from Vessel was Appropriate and Proper.

The first proceeding which was instituted was by the owners of the ship against the seamen for possession of the

vessel. However, this question became moot, and is not now a proper one for this Court to consider. When the vessel arrived in Newport News, various demands were made by the seamen which were investigated by the Greek Port authority. The master, acting under the authority of the official of the Greek Government, refused to meet their demands, whereupon the seamen refused either to leave the ship or to work upon the ship, and it became necessary to take an appropriate proceeding to have them removed from the vessel. The matter was set down for hearing, and during the hearing an agreement was reached between counsel whereby the seamen were to leave the vessel. The Court was apprised of this, and further proceedings were suspended. The District Court held that a possessory libel was the proper proceeding under the circumstances, and this was affirmed in the Court of Appeals for the Fourth Circuit.

All of the wages which had been earned by the libellants for the current voyage were first tendered to them. Upon refusal of the libellants to accept the amounts tendered, the wages were paid into Court in the possessory libel action and were later withdrawn on petition of the libellants.

The possessory libel action is unquestionably the proper proceeding under the circumstances to permit the owner of the vessel to regain the lawful possession and use of his property.

Ward v. *Peck*, 18 How. 267;
The Sch. TILTON, 5 Mason 456; Fed. Case No. 14054 (Opinion by Mr. Justice Story);
The NAVEMAR, 303 U. S. 68; 58 S. Ct. 432.

The Court of Appeals for the Fourth Circuit in its opinion in the instant case (175 F. (2) 730, 732) had the following to say concerning this point:

> "Whether the suit asking especial relief is properly called a possessory suit or not, there can be no question as to the power of an admiralty court to grant relief in such case by an appropriate writ. The right to strike does not carry with it the right to deprive another person

of the possession of his property (see The OAKMAR [D. C.] 20 F. Supp, 650; The LOSMAR [D. C.] 20 F. Supp. 887), nor the right to disobey the lawful orders of the master when the vessel is away from its home port. *Southern S. S. Co.* v. *N. L. R. B.*, 316 U. S. 31; 62 S Ct. 886; 86 L. Ed. 1246, we find nothing in the Norris-LaGuardia Act, 29 U. S. C. A. Secs. 101-115, to the contrary."

We may add that we find nothing in the *Wagner Act*, 29 U. S. C. A., Secs. 151-166, or the *Taft-Hartley Act*, 29 U. S. C. A., Secs. 141-167, to the contrary.

Libellants cite *The ECLIPSE*, 135 U. S. 599, which, however, sustains only the proposition that the Admiralty Court will not entertain a bill for specific performance of a non-maritime contract for the sale of a vessel. Also, the case of *U. S.* v. *Cornell Steamboat Co.*, 202 U. S. 184, 194, which merely supports the proposition that the Admiralty Court has no general equity jurisdiction.

The other cases cited by the libellants at page 16 of their brief are clearly distinguishable and have no application in support of the proposition asserted by the libellants to the effect that the possessory libel action was improper and that the Court was without jurisdiction to entertain the same.

3. THE GREEK CONUSLAR OFFICIAL, MICHAEL O. PYLIAROS, WAS A PROPER REVIEWING AUTHORITY TO REVIEW AND INVESTIGATE THE COMPLAINTS OF THE MASTER AND THE ACTIONS OF THE SEAMEN.

In spite of the numerous and derogatory statements leveled at Michael O. Pyliaros by the libellants, this man was a duly authorized consular representative of the Greek Government stationed in the Port of New York, and acted discreetly and properly in this case. In the companion case involving the *CAPT. K. PAPAZOGLOU* (1948 A. M. C. 1676, 1681, 1682), the United States District Judge, commenting upon this officer, stated as follows:

"Pyliaros, the Court finds, was a port captain and the duly authorized consular or commercial representative of the Greek Government, stationed in the Port of New York, with the duty of advising and directing Greek owners, masters and seamen in the adjustment of disputes and problems arising on the Greek ships in American waters.

* * * * *

"However, the libellants have not make out a case for recovery of any kind against Pyliaros. He acted courageously, fairly and in strict accordance with the obligations of his office."

In the numerous other Greek cases now pending it is acknowledged that there exists a treaty between the United States of America and the Kingdom of Greece, known as *The Consular Convention of 1902*, 33 Stat. 2122, which was ratified by both countries and proclaimed by the President of the United States on July 11, 1903. Article 12 of this Treaty provides, as follows:

"Art. 12—Consul-general, consuls, vice-consuls, and consular agents shall have exclusive charge of the internal order of the merchant vessels of their nation and shall alone take cognizance of differences which may arise either at sea or in port between the captains, officers and crews, without exception, particular in reference to the adjustment of wages and the execution of contracts."

The cases universally recognize, that, except insofar as it has been abrogated by the *Seamen's (LaFollette) Act of 1915*, the said Treaty is in full force and effect.

Lakos, et al., v. *Saliaris, The LEONIDAS*, 116 F. (2) 440, 4th Cir.

Petition of Georgakopoulos, 81 F. Supp. 411 (E. D. Pa.).

In the instant case Michael O. Pyliaros acted in good faith and in accordance with the requirements of the Greek Law for such cases made and provided. *The Steamship VIRGINIA*,

1948 A. M. C. 1721, 1723. The cases cited by the libellants raise issues quite different from those involved in the case at bar.

4. No Long Period Service Bonuses Were Due Any of the Libellants Upon Their Discharge from the Steamship Virginia.

The claim made by the libellants for bonuses is based on Clause "C" of the Greek *Collective Agreement* of September 2, 1943, signed in London, England, by representatives of the Greek Shipping Cooperation Committee, for the Greek Shipping Offices and certain representatives of the Greek Maritime Unions for Greek seamen. Briefly Clause "C" of the Greek Collective Agreement provides under the heading "Duration of Engagement" that the seamen sign on for a full round voyage. If they desire to obtain their discharge at the completion of this round voyage, they may do so provided they inform the master of the vessel of their intention. Those completing six months' continuous service on a Greek ship are entitled to a long period service bonus amounting to £20 for ordinary members of the crew, and to £25 for officers. Portions of this long period service bonus are payable after completing five and four months' service, respectively.

In no event are those employed for a period of less than four months' entitled to long period service bonuses.

The evidence clearly shows that of the ten libellants only four (Vordonis, Ramfos, Sardis and Asprogerakas) were even aboard the steamship VIRGINIA for a period of as long as four months. All of the libellants were discharged on March 27, 1948, and left the vessel on April 2, 1948.

Of the four libellants aboard for as long a time as four months, three of them (Vordonis, Ramfos and Sardis) were employed on August 5, 1947, and Asprogerakas was employed September 16, 1947. Vordonis, Ramfos and Sardis had been aboard as supernumeraries since July 16, 1947. The libellants, Ramfos and Sardis, testified that they went aboard the steamship VIRGINIA as supernumeraries and were not employed

until August 5, 1947, at Philadelphia, Pa. (See depositions of Ramfos, pp. 276, 280; Sardis, p. 314.)

Captain Leonardos Capparis testified that under Greek regulations he was required to take aboard supernumeraries from Europe whenever he was able to do so. (Depositions Capparis, pp. 45, 46, 47.) The supernumerary agreements signed by the libellants Ramfos, Sardis and Vordonis is shown as Respondents' Exhibit "H" (Respondents' brief in Court of Appeals, App. p. 25.)

Clause "C" of the Greek Collective Agreement, Respondents' Brief in Court of Appeals, App. p. 65, by its wording shows that it was necessary because of the fact that Article 361 of the Greek Commercial Code was impossible of application during the occupation of Greece by the Axis powers. This impossibility was, of course, removed when Greece was liberated by the Allies in 1944. Great confusion was created by the fact that both seaman and shipowners were unable to determine whether Article 361 of the Greek Commercial Code came back into effect with the liberation of Greece or whether the Collective Agreement of 1943 continued in application.

On account of this confusion the Greek shipowners and seamen realized the necessity of a subsequent agreement and clarification concerning this point. As a result of this realization on November 29, 1947, the Special Collective Agreement was entered into whereby it was provided that the six months' service bonus created by the Collective Agreement of 1943 should be continued in force up to November 30, 1947, at which time the six months' service bonus heretofore mentioned, as well as other portions of the said agreement were definitely terminated. By this Special Collective Agreement it was provided that Article 361 of the Greek Commercial Code should apply. (Exhibit "D" Resp. Brief in Court of Appeals, App. p. 70.)

The Ministry of Merchant Marine, realizing the urgency of the situation, ratified the Special Collective Agreement immediately. (Exhibit "G" Resp. Brief in Court of Appeals, App. p. 73.)

It is obvious from the record that all of the crew members of the Steamship VIRGINIA who had been aboard as much as four months prior to November 30, 1947, were paid the portions of the service bonus to which they were entitled (Capparis, Dep. 46, 47, 48). The Court below found this to be true. (*Steamship VIRGINIA, Supra.*)

None of the four men (Vordonis, Ramfos, Sardis and Asprogerakas) who were actually employed aboard the steamship in August and September had been aboard for the requisite time to earn any service bonus.

The Emergency Act No. 3276 of 1944 (Exhibit "B," Resp. Brief in Court of Appeals, App. pp. 68, 69 and 70) is a part of the Greek law, and as such must be recognized as valid and binding on the libellants.

In the case of *S. S. CAPTAIN K. PAPAZOGLOU, Supra*, the Court stated in its memorandum opinion at page 1678 as follows:

> "The bonus stipulated in the Collective Agreement was rescinded by a Special Collective Agreement dated November 29, 1947, and cancellation became effective as of November 30, 1947, both in respect to periods of employment commencing after that date as well as for those commenced before, but not terminated until after November 30. The Special Collective Agreement, as did the original Collective Agreement, received the approval of the Minister of Merchant Marine of Greece, and thereupon it became binding upon all seamen and shipowners in accordance with the duly enacted laws of Greece, particularly the Act of 3276 of 1944."

The respondents produced C. N. Clinia as a Greek legal expert, whose testimony concerning the *Emergency Act No. 3276 of 1944*, the *Special Collective Agreement* and the application of the bonus provisions after November 30, 1947, is set out in the Appendix to Respondents' brief below at pages 100-106.

Under the laws of Greece a group of seamen cannot defeat the basic purpose of a duly ratified Collective Agreement by refusing to acknowledge its validity.

The only available decision directly concerning the effect of the Second Collective Agreement of November 30, 1947 is the English case of *Galaxias Steamship Co.* v. *Christofis*, 1948 G. No. 961; Kings' Bench Division. The case holds that the long period service bonus was effectively discontinued by the *Special Collective Agreement* of November, 1947.

There is apparently no question that the union to which the libellants claim allegiance (Federation of Greek Maritime Unions, known as OENO) was invited to participate in the formation and proclamation of the Greek Collective Agreement of November, 1947. In fact the OENO participated, but refused to consent to the modification of the then existing Collective Agreement. *Pet. of Georgakopoulos*, 85 F. Supp. 37, 40.

Under such circumstances, and in view of the testimony of C. N. Clinia, Greek Lawyer, it appears clear that this minority group could not defeat the purpose of the Special Collective Agreement. (See Emergency Act No. 3276 of 1944, (Respondents Exhibit "B", App. pp. 68, 69 and 70.)

Whether the Greek seamen were paid all sums due them is again a question of fact, which both the District and Appellate Courts have decided.

5. All of the Libellants Were Discharged for Ample Cause With the Exception of Petros Maleuris. Maleuris Was Paid the Amount Due Him Under the Greek Law.

The libellants base their claim for indemnities for discharge without cause on *Article 361 of the Greek Commercial Code.* (App. p. 27.) The sole questions that arise under this claim are questions of fact and not of law. It is conceded by the libellants, excepting only Maleuris, that if they were discharged as the result of some fault, failure or misconduct on their own part, then they are entitled under the Greek law to no indemnities for their discharge.

There is ample evidence to support the proposition that all of the libellants, except Maleuris, were discharged for sufficient cause.

The District Court, after considering the evidence before it, resolved the questions of fact in favor of the respondents. *S/S VIRGINIA, Supra.*) This decision, except as to advances, was sustained by the Court of Appeals for the Fourth Circuit.

It must be remembered that the very law under which the libellants assert their claim to a service bonus, provides that the proper officer to deal with the settlement of disputes, where no arbitration committee is functioning, is "the Consular or Port authorities." By the wording of the Collective Agreement, Clause "C", Paragraph 2 (a):

> "* * * where the Consular or Port authorities consider that the discharge is justifiable, the shipowner is not liable to pay any compensation on account of such discharge."

(See Resp. Brief in Court of Appeals, App., pp. 65, 66.)

The libellant, Maleuris, is in a different status from the other libellants, in that it was found by the Greek Port Captain that there was not "sufficient cause" for his discharge. The Greek Port Captain, Pyliaros, decided that Maleuris was entitled to forty days pay as an indemnity for his discharge, and the lower court upheld his interpretation of the Greek law. Maleuris was immediately tendered and subsequently accepted all sums found to be due him.

The libellants also claim that they are entitled to receive the money equivalent of the cost of transportation back to Greece in spite of the fact that they neither desired nor requested actual repatriation. The evidence discloses that the libellants, Maleuris, Sardis, Asprogerakas, Ramfos, Skiafos, Kakoulidis, Kalogeras and Vordonis, were employed in the United States of America. This contention on the part of the libellants is contrary to the Greek law as is indicated by the testimony of both libellants' and respondents' Greek legal experts. (Papapolitis, Deps. pp. 85, 87; Clinia, Deps. Resp. brief below, App., pp. 106, 107.)

6. The Advances Claimed by the Libellants Beyond the Current Voyage Were not Paid to Them in Contravention of Title 46 U. S. C. A., Sec. 599.

This point has been fully and completely discussed in our cross-petition for writ of *certiorari*, and in the interest of brevity we refer to the said cross-petition in support of our position.

7. No Penalty Can be Imposed on Advances, Bonuses or Indemnities.

It is conceded that upon the last voyage, in which the libellants participated, advances were made to the extent of $1,650.00. There was evidence to the effect that on previous voyages there had also been advances, which brought the total up to $3,550.00. No claim was ever made for any advances in either of the libels filed by libellants. In the possessory proceeding, proctor for the seamen filed a motion asking for judgment for the advances as claimed by him. This was a rather unique method, but as long as a question had been raised and could be met we made no point of it. After the making of this unusual demand the respondents made a deposit with the Court of the full $3,550.00; this deposit being made "without prejudice, expressly reserving to the respondents any legal and/or factual defenses, jurisdictional or otherwise which they might have."

The District Court held the respondents liable for the advances made upon the last voyage, that is $1,650.00, but denied recovery to the libellants of the advances made upon previous voyages. *Maleuris, et als* v. *Anthony G. Papadakis* et als (S/S VIRGINIA), 1948 AMC 1721; (E. D. Va.)

Libellants seek to impose the penalty statute of two days' pay for one, not only upon items of advances which they claim, but items such as payments under Section 361 of the Greek Commercial Code and the six months' service payment. However, it is to be remembered that the payments under Section 361 of the Greek Code are indemnities in the form of

liquidated damages. They are not "wages" to which a penalty would be applicable. (Clina, dep. respondents brief below, App. p. 110.)

A peculiarly similar claim was made in The PRAHOVA, 38 F. Supp. 418, 425, (S. D. Cal.), which involved the interpretation of a Rumanian law similar to Article 361 of the Greek Commercial Code, and there the Court stated as follows:

> "The indemnity for four months' wages is not considered as wages earned, but as an indemnity to reimburse for loss, or liquidated damages to make the seaman whole by reason of wrongful discharge."

In any event, as set out above the seamen, excepting Maleuris, were not entitled to payments under Section 361 of the Greek Code no matter how it may be designated. The indemnities held to be due Maleuris were on deposit in the District Court on April 2, 1948, the date when the original libel was filed by his proctors.

Libellants claim, also, that the advances and other payments demanded were withheld without good cause, and that they were entitled to the penalty of two days' pay for one, provided by *Title 46 USCA 596*.

Whether payments were withheld from the seamen "without sufficient cause" is entirely a question of fact which was considered by the lower court and resolved in favor of the respondents. It should not be considered here. As pointed out by the Court of Appeals for the Fourth Circuit in the case of *Maleuris et al* v. *S/S VIRGINIA*, *Supra*, p. 733:

> "We do not think, however, that the failure to pay again the amount of advances after there has been a settlement in good faith and the amount of wages due the seamen has actually been paid with no question raised as to the legality of the advances, can be said to be a failure to pay wages "without sufficient cause," so as to subject the vessel to a claim for double wages under the provisions of Title 46 U. S. C. A. Sec. 596."

The Courts have abundantly defined this phrase "without sufficient cause." It means that there must exist conduct that is unwarranted, arbitrary and unjust. It has been found by the Courts that no such conduct evidenced itself in this case.

See especially the following cases:

Collie v. *Fergusson*, 281 U. S. 52; 50 S. Ct. 189
Glandzis, et al v. *Callinicos*, (2d Cir.) 140 F. (2d) 111.
The EASTERNER, (4th Cir.) 47 F. (2d) 605
The CORAPEAK, (4th Cir.) 46 F. (2d) 262
The CUBADIST, (5th Cir.) 256 Fed. 203
Butler v. *U. S. War Shipp. Adm.*, 68 F. Supp. 441.

To apply the penalty of these claims would be to provide a penalty upon a penalty which has never been the purpose of of our law. The repayment of advances is in itself a double payment, and this Court will not look with favor upon a claim that goes far beyond the reaches of the statute.

The principle by which the Courts are guided is laid down in the cases cited above; in spite of contentions of libellants to the contrary, there appears no conflict in the decision as to these basic principles. It remains only to apply that principle to the facts of each case. The facts in the cases cited by libellants are quite different from those existing here. The Circuit Court of Appeals for the Fourth Circuit and the District Court both held in this case that the master of the Steamship VIRGINIA acted in good faith, and that the facts did not justify a finding that there was a withholding within the meaning of the statute.

CONCLUSION.

The respondents submit that the decisions of the Court of Appeals for the Fourth Circuit and the District Court for the Eastern District of Virginia are eminently correct insofar as they deal with all of the claims of the libellants, with the exception of the claim for advances on voyages prior to the last voyage, which is fully discussed in respondents' cross-

petition. The many and varied claims asserted by the libellants were based largely upon questions of fact which the court below resolved in favor of the respondents; the decisions of the Courts below are based on ample substantial evidence. The various sums claimed by the libellants were not due them, nor were any sums withheld from the said libellants without sufficient cause so as to bring the same within Title 46 U. S.C. A. Section 596. There is no real conflict of authority as to the basic points involved, no new or novel questions needing further clarification, and no question of general interest warranting the granting of a writ of certiorari in accordance with the libellants petition. For these reasons the decress of the Court of Appeals for the Fourth Circuit and the District Court should not be disturbed except as to remote advances, and a writ of certiorari should be denied the libellants.

Respectfully submitted,

LEON T. SEAWELL,
THOMAS M. JOHNSTON,
Proctors for Respondents-
Cross-Petitioners.

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APPENDIX

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The S. S. VIRGINIA is a steamship flying the flag of the Kingdom of Greece and is subject to the laws of that nation.

2. The S. S. VIRGINIA is owned by Anthony G. Papadakis, her master being Leonardos Capparis, both of whom are citizens and residents of the Kingdom of Greece.

3. Petros Maleuris and the remaining libellants were seamen on board the S. S. VIRGINIA and are also citizens and residents of the Kingdom of Greece.

4. The S. S. VIRGINIA is an ex-liberty ship purchased by the Greek owner from the United States and was and is engaged in trade between Hampton Roads and various European and African ports.

5. The libellants were hired as members of the crew of the S. S. VIRGINIA at the following places and times, and in the following capacities:

Name			*Wage*	*Rate*
Maleuris	Newport News, Va.	Jan. 9, 1948	£63.15.00	Wireless Op.
Kortesis	Rouen, France	Dec. 16, 1947	£28.00.00	Sailor
Mbitros	Rouen, France	Dec. 16, 1947	£28.00.00	Sailor
Sardis	Marseilles, France	July 16, 1947	£28.00.00	Sailor
Asprogerakas	Philadelphia, Pa.	Sept. 16, 1947	£30.00.00	Fireman
Ramfos	Marseilles, France	July 16, 1947	£28.00.00	Sailor
Skiafos	Newport News, Va.	Jan. 13, 1948	£32.00.00	Carpenter
Kakoulides	Newport News, Va.	Jan. 13, 1948	£32.00.00	Oiler
Kalogeras	Newport News, Va.	Jan. 11, 1948	£30.00.00	Wiper
Vordonis	Marseilles, France	July 16, 1947	£28.00.00	Sailor

6. Subsequent to their employment, and on January 15 1948, the libellants as members of the crew of the S. S. VIRGINIA commenced a round trip from Newport News to France and Africa, returning to Newport News on or about March 15, 1948.

7. During this voyage, from January to March of 1948, all of the libellants committed certain acts which the master of the S. S. VIRGINIA considered improper. On February 19th at Nantes, France, all of the libellants, with the exception of the radio operator Maleuris, went on a four hour sympathetic strike in protest of certain action on the part of the Greek Government. The sailors Vordonis, Ramfos, Kortesis, Mbitros, Sardis and the carpenter Skiafos, refused to perform duties incident to the opening and closing of hatches and the taking of stores aboard unless they were paid extra compensation. The members of the Engineering Department, Kalogeras, Kakoulides and Asprogerakas, refused to perform in the regular course of their duties various orders given them by the chief engineer, Petros Androulidakis. Upon return of the ship to Newport News all of the libellants, with the exception of Petros Maleuris, refused to perform their usual and customary work unless their demands for extra pay were met.

8. On the return of the ship to Newport News, the vessel was taken to the Newport News Shipbuilding and Dry Dock shipyard for repairs. All of the crew, including the libellants, remained aboard the ship.

9. Promptly upon the return of the ship to Newport News the master appealed to the Royal Consul General of Greece, whose office is located in New York. This official sent Commander Michael O. Pyliaros, Greek Port Captain, to Newport News, where he boarded the S. S. VIRGINIA on March 25, 1948, and conducted an investigation of the whole situation pertaining to these libellants. In his official capacity he entered an order authorizing the master to discharge all of the libellants with the exception of Petros Maleuris for the following offenses:

a. Attempting to obtain financial advantage not allowed by the Greek laws.

b. Revolting against the command of the master and refusing to execute orders of the master and the other officers of the ship.

c. Claiming payment for opening and closing of hatches, handling of provisions and supplies, attending water gauges, etc., which payments are not allowed under the Greek law.

d. Making political strike.

e. Claiming bonus payments which had been cancelled by Collective Agreement of November 30, 1947.

Commander Pyliaros in his order stated that the dismissal was justified and that there was no obligation to indemnify the nine libellants under the Greek law as their acts were punishable by the disciplinary laws of Greece.

10. The tenth libellant, Petros Maleuris, was considered in a separate order and the master was given the unqualified right to discharge the said Petros Maleuris, but was required to tender to this libellant, along with the wages which had been earned, a sum equal to 40 days pay. This amount was fixed by the Port Captain Michael Pyliaros as the legal indemnity to him on his discharge under the Greek law.

11. The findings and orders of Michael Pyliaros were published to all of the libellants and all of them were tendered the amounts of wages due them, including overtime. In addition, the libellant Petros Maleuris was tendered 40 days extra pay.

12. All of the libellants refused to accept their wages and also refused to leave the S. S. VIRGINIA in accordance with the master's order until and unless they were paid such wages and extras as well as bonuses and indemnities which they claimed to be due them.

13. On March 30, 1948, a possessory libel was filed by Anthony G. Papadakis, owner of the S. S. VIRGINIA, to remove the libellants from the ship. After a partial hearing of the possessory libel, the libellants left the S. S. VIRGINIA pursuant to an agreement of counsel. (The memorandum of the Court is in error in stating that they were ordered to leave.) On April 2, 1948, the ten seamen libelled the S. S. VIRGINIA for the wages, overtime, bonuses and indemnities which they claimed would be due them.

14. On April 1, 1948, during the hearing of the possessory libel filed by Anthony G. Papadakis, owner, the amount of the earned wages and overtime theretofore tendered to the seamen and refused by them was deposited in court by respondents together with a statement of balances due each of the men. Upon this deposit, an order was entered on libellants' request directing the payment of the money over to the seamen's proctors.

On April 2, 1948, motion was filed in the possessory libel action alleging that advances had been illegally made to the libellants and seeking summary judgment therefore.

15. In the libel filed by the seamen on April 2, 1948, the libellants made no claim for advances contrary to the Seamen's Act, 38 Stat. 1164, 46 U. S. C. A. 599.

16. In the depositions taken by the libellants and in interrogatories filed by them calling for wage accounts, and in the oral pleading, proctors for the libellants made claims amounting to at least the sum of $3,550.00 as advances made by the respondents to the libellants; contrary to the provisions of the above law.

17. The sum of $3,550.00 was deposited May 21, 1948, in court by the respondents, without prejudice, and "in order to obviate any penalties under Title 46 U. S. C. A., Section 596" in the event that such moneys were determined to be advances. The deposit was made with the reservation of the right to contest the claim of the libellants to all or any part of the sum so deposited.

18. Captain Leonardos Capparis, master of the S. S. VIRGINIA, Submitted his record of advances made on the last voyage of the VIRGINIA, which began January 15, 1948, and terminated March 15, 1948. These advances totalled $1,650.00. The remainder of the advances claimed by the libellants are alleged to have been made on previous voyages.

19. On May 21, 1948, the respondents Anthony G. Papadakis, owner, and Leonardos Capparis, master filed a cross libel in this case claiming that any advances were made in good faith, carrying out the contract of employment, and at the insistence of the libellants. The respondents alleged in their cross libel that if the libellants were entitled to all or any part of the advances claimed, then under their contract of employment the libellants had been overpaid to the extent that they were allowed to recover; and the respondents prayed for judgment in their favor against the libellants for any amount which the libellants were allowed to recover as such advances.

From the foregoing Findings of Fact the Court announces the following:

CONCLUSIONS OF LAW.

1. The possessory libel filed by the owner and master was the proper procedure to be taken under the circumstances.

2. There was no justification for the libellants remaining aboard the S. S. VIRGINIA and refusing to leave after receiving the order of the master.

3. The libellants seamen are not entitled to recover the extra wages, bonuses and indemnities asserted by them.

4. The radio operator is not entitled to any further recovery and the decision of the Greek authority limiting his indemnity after discharge to 40 days pay is proper.

5. The Greek Consul General's office in the United States, located in New York, was the proper authority for hearing and determining the disputes between the seamen and the owner and master of the S. S. VIRGINIA; and the Consul General himself, or one of the deputies connected with his office, was the proper person for hearing and determining these issues.

6. The proceeding against Michael Pyliaros should be dismissed.

7. The libellants did not prove the claim alleged in the supplemental libel.

8. Libellants are entitled to recover over and from the S. S. VIRGINIA the advances claimed by them as having been made in contravention of the Statute (38 Stat. 1164, 46 U. S. C. A. 599) in the sum of $1,650.00, in accordance with the account marked respondents' Exhibit "D".

9. Libellants are not entitled to any recovery for the alleged advances made on other and previous voyages, such matters having been concluded between them and the master at the completion of such voyages.

10. Respondents are entitled to have refunded to them the balance of the deposit made by them in Court of the sum of $1,900.00.

11. Respondents are not entitled to recover on their cross libel filed herein.

/s/ ALBERT V. BRYAN,
United States District Judge.

July 28, 1948.

GREEK COMMERCIAL CODE SECTION 361.

This section of the Greek Commercial Code provides as follows:

(1) A master may discharge a seaman at any time without fault on the part of the seaman, however, in so doing he must furnish him the means of repatriation or put him on board a vessel bound for his motherland.

(2) A seaman discharged without sufficient cause is entitled to an indemnity as follows:

(a) If he is discharged at the port he signed on and prior to sailing the indemnity shall be one months pay.

(b) If he is discharged after sailing in a port of a State other than the port at which he signed on the indemnity shall be equal to forty days pay.

(c) If he is discharged on the coasts of Europe, Asia or Africa the indemnity is equal to two months pay.

(d) If he is discharged at any other place the indemnity is equal to four months pay.

(3) A seaman discharged at his own request is not entitled to indemnities.

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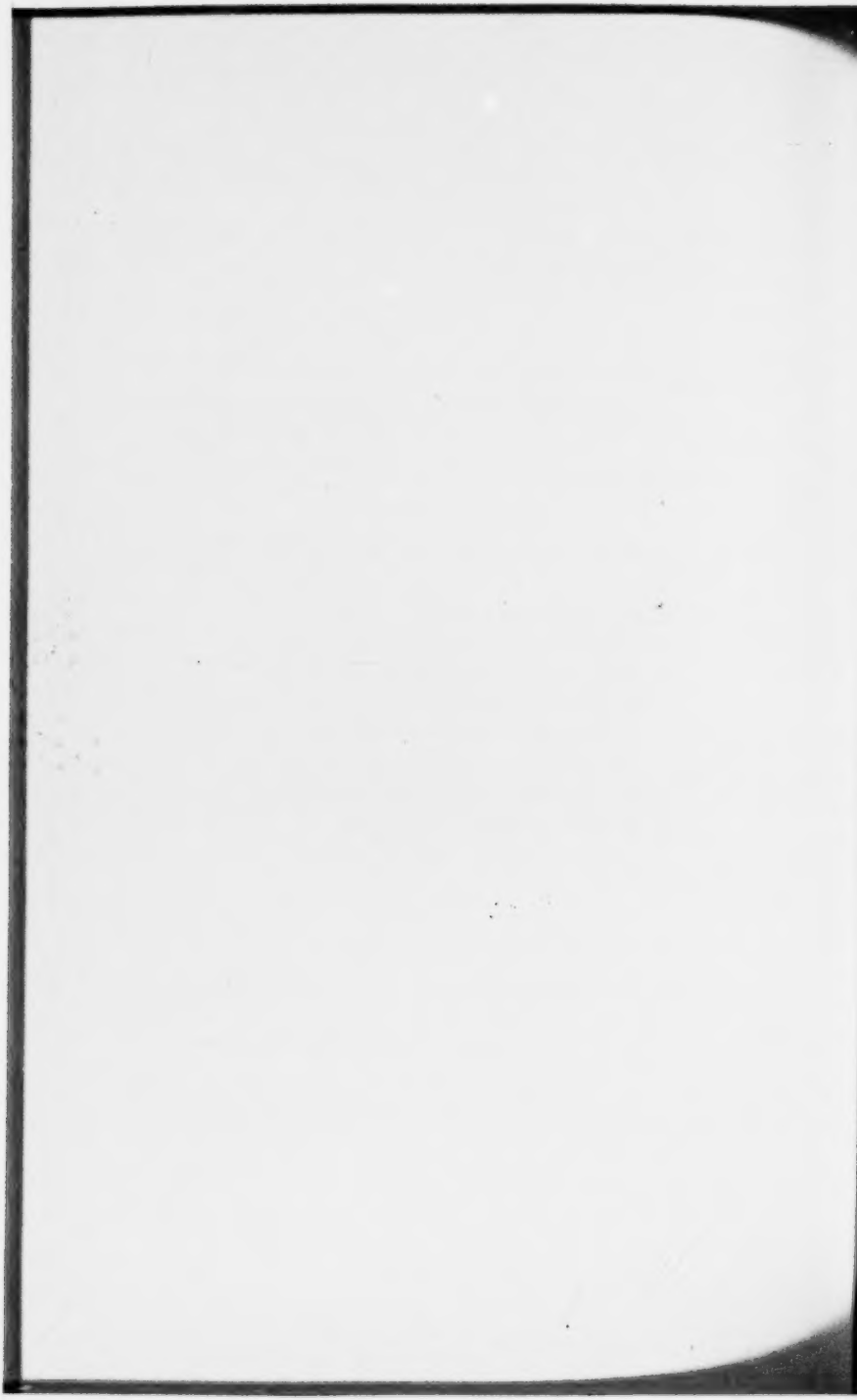

Supreme Court of the United States

OCTOBER TERM, 1949.

No. ....

PETROS MALEURIS, CHRISTOS KAKOULIDIS, ATHANASIOS SARDIS, DIDNSIOS MBITROS, ZEPOS VORDONIS, KOST RAMFOS, EFSTRAZTIOS KORTESIS, DIMITRIOS KALOGERAS, DIMITRIOS ASPROGERAKAS, NICKOS SKIAFOS,

versus

ANTHONY G. PAPADAKIS, AS OWNER, MICHAEL PILIAROS, HIS AGENT, LEONARDOS CAPPARIS, AS MASTER, ALL BEING INTERESTED IN THE OPERATION OF THE STEAMSHIP VIRGINIA.

On Application for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

Cross-Petition.

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

The cross-petition of Anthony G. Papadakis, owner, and Leonardos Capparis, master, of the steamship VIRGINIA, hereinafter sometimes called respondents, respectfully shows to this Honorable Court as follows:

1. The above entitled cause was a suit in the District Court of the United States for the Eastern District of Virginia, at Norfolk, against the cross-petitioners, Anthony G. Papadakis, owner, Michael Piliaros, his agent, and Leonardos Capparis, master of the Greek steamship VIRGINIA; Commander Michael O. Piliaros, Greek Port Captain, was the representative of the Marine Department of the General Royal Consulate of Greece, whose office is located in New York City. It was held both in the United States District Court for the Eastern District of Virginia, and in the United States Court of Appeals for the Fourth Circuit that the suit against Michael O. Piliaros is without foundation, and as to him the case was dismissed.

2. The libellants in this case were 10 Greek seamen who sought to recover wages, bonuses, indemnities and repatriation under the Greek Law. Both the libellants and the respondents are citizens and nationals of the Kingdom of Greece. The libellants were employed aboard the steamship VIRGINIA at various ports during the years 1947 and 1948. Subsequent to their employment, and on January 15, 1948, the libellants as members of the crew of the steamship VIRGINIA commenced a round trip aboard the said steamship from Newport News, Virginia, to France and Africa, returning to Newport News on or about March 15, 1948.

Because of certain acts of the libellants during this round voyage, on return of the vessel to Newport News, Virginia, the master of the steamship appealed to the Chief of the Marine Department of the General Royal Consulate of Greece, whose office is located in New York, to conduct an investigation concerning the actions of the libellants and determine whether or not, under the Greek law, their said actions would justify their discharge from the vessel. Commander Michael O. Piliaros, Greek Port Captain, was sent to Newport News, where he boarded the steamship VIRGINIA on March 25, 1948, and conducted an investigation. On the basis of the investigation which he conducted,

all of the libellants, with the exception of Petros Maleuris, were ordered discharged "with cause".

It was ordered that the libellant, Petros Maleuris, should receive 40 days wages as an indemnity for discharge "without cause".

3. Upon publication of the order of Michael Piliaros, and tender of wages due, plus overtime, the libellants refused to leave the steamship VIRGINIA. As a result of the refusal on the part of the libellants to leave the vessel, a possessory libel was filed by the owner of the steamship VIRGINIA. Upon the institution of this possessory libel and partial hearing thereof the libellants agreed to leave the vessel. It was unnecessary for the United States District Court to enter a final adjudication on the merits in the possessory libel action. In the possessory libel action deposit was made into Court of the wages tendered to the libellants and refused by them, as well as the 40 days wages due Petros Maleuris as an indemnity for discharge without cause. The amount of the deposit in Court totalled $1,488.70. Upon application by libellants and by order of the United States District Court the appropriate sums were paid to the libellants.

In the possessory libel action the libellants filed a motion claiming the sum of $3,550.00 as advances made to them contrary to the provisions of Title 46, U. S. C. A., Sec. 599. On May 21, 1948, this amount was deposited in court by respondents without prejudice.

4. On April 2, 1948, the libellants filed their libel, in which the following claims were made:

a. Bonus for six months' service, $80.00 each.

b. Extra pay for removing hatch covers, etc. $100.00.

c. Conspiracy to discharge, $1,000.00 each.

d. Four months' pay, plus the cost of transportation back to Greece under Article 361 of the Greek Commercial Code.

e. Respondents "plan to make" derogatory entries in libellant's seamen's books, $1,000.00 each.

f. Respondent's "plan to withhold" seamen's books, $1,000.00 each (Resp. App. 44-46).

On the day of the trial of this case in the United States District Court, the libellants filed a supplementary libel, in which the following claims were made:

a. The libellant seamen were compelled to leave the vessel and were arrested by United States Immigration Authorities, $1,000.00 each.

b. The respondent, Piliaros, Greek Port Captain, made derogatory entries in libellants' seamen's books, $1,000.00.

c. The libellant, Nickos, Skiafos, became ill as a result of his service aboard the steamship VIRGINIA, and the respondents failed to furnish proper medical care, maintenance, cure, etc., $1,500.00.

d. The libellant, Christos Kakoulidis, became ill as a result of his service aboard the steamship VIRGINIA, and the respondents failed to furnish proper medical care, maintenance, cure, etc., $2,000.00 (Resp. App. 46-47).

In neither the original nor the supplementary libel were claims asserted for advances.

5. On July 15, 1948, memorandum was filed by the Judge of the United States District Court for the Eastern District of Virginia, in which all of the various claims made by the libellants were denied, with the exception of advances made to the libellants during the last voyage of the vessel. The evidence disclosed that the amount of the advances to the libellants on the last voyage totalled $1,650.00.

6. From this decision of the United States District Court the libellants appealed to the United States Court of Appeals for the Fourth Circuit, which Court decided that the appellants, libellants, were entitled to recover the

total amount of the advances made to the libellants by the respondents during the entire period of their employment aboard the steamship VIRGINIA. In every other respect the United States Court of Appeals for the Fourth Circuit affirmed the judgment of the District Court, 175 F. (2d) 730.

7. The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254, paragraph (1). The judgment of the United States Court of Appeals for the Fourth Circuit was entered May 17, 1949. Petition for rehearing was denied July 21, 1949 (175 Fed. (2d) 734). The mandate was stayed pending filing of petition for writ of *certiorari*. This cross-petition for writ of *certiorari* is filed October ...., 1949.

8. The sole question presented by this cross-petition is as follows:

> "Are the libellant Greek alien seamen entitled to recover advances paid contrary to Title 46 U. S. C. A., Section 599, on voyages prior to the last voyage during which they were employed aboard a Greek vessel?"

9. The reasons relied on for the allowance of the writ are that the judgment of the Court of Appeals for the Fourth Circuit constitutes a decision of an important question of Federal law which has not been, but should be, settled by the Supreme Court of the United States, and that the United States Court of Appeals for the Fourth Circuit has decided a Federal question in a way probably in conflict with the applicable decisions of this Court.

Wherefore, upon due consideration of this cross-petition and the annexed brief and the certified copies of the record of the United States Court of Appeals for the Fourth Circuit filed herewith, respondents and cross-petitioners respectfully pray that a writ of *certiorari* be issued under the seal of this Court directed to the United States Court of Appeals for the Fourth Circuit commanding that

Court to certify and send to this Court a full and complete transcript of the record of all proceedings had in this cause to the end that the same may be reviewed and determined by this Honorable Court. And the petitioners pray that upon the final consideration of this cause the said judgment of the Circuit Court of Appeals, insofar as the same deals with the question of advances on voyages prior to the last voyage, be reversed by this Honorable Court, that the judgment of the United States District Court be affirmed, and judgment rendered in favor of the respondents.

Cross-Petitioners further pray for such other, equitable and general relief as may appertain to this case and as may be competent for this Honorable Court to grant.

LEON T. SEAWELL,
Counsel for Cross-Petitioners.

State of Virginia,
City of Norfolk, to-wit:

Before me, the undersigned notary public, personally appeared Leon T. Seawell, who being duly, sworn, deposes and says that he is a member of the Bar of the Supreme Court of the United States, and is of counsel for cross-petitioners herein; that he has read the foregoing application for a writ of *certiorari;* and that all the facts therein stated are true and correct to the best of his knowledge and belief.

LEON T. SEAWELL.

Subscribed and sworn to before me this 13th day of October, 1949.

ANNA M. BRAITHWAITE,
Notary Public.

My comm. expires 7/13/51.

SUMMARY AND CONTENTS OF BRIEF

I. The Judgment of the United States Court of Appeals for the Fourth Circuit Constitutes a Decision on an Important Question of Federal Law Which has Not Been, but Should Be, Settled by this Court.

II. The United States Court of Appeals for the Fourth Circuit Erred in Allowing the Libellants, Sardis, Ramfos, Asprogerakas and Vordonis to Recover Advances Made Prior to the Last Voyage for the Following Reasons:

A. The Duration of Engagement of Greek Seamen is One Round Voyage and the Accounts of the Libellants Were Settled on that Basis. There Was No Indication of Bad Faith in the Settlement of the Accounts in Question.

B. In the Absence of Bad Faith or Fraud the Settlement of Accounts Between the Libellants and the Respondents Should Not Be Set Aside.

C. The Amounts Claimed as Advances by the Four Libellants on Voyages Prior to January 15, 1948, Must Be Reduced by the Amount of Taxes Which the Respondents are Obligated, Under the Greek Law, to Deduct from the Libellants' Earnings.

D. The Mere Fact that the Word "Advances" Appears in the Pay Accounts of the Four Libellants Does Not Necessarily Mean that the Money Paid Was an Advance on Wages to be Earned in the Future. It is Only to Such Payments that Our Statute Applies. The Libellants Must Show by the Evidence that the Amounts were Paid in Advance of the Time When They Were Earned.

E. The Claim Asserted by the Libellant, Sardis, to an Advance in November, 1947, is Not Supported by the Evidence.

F. Title 46 U. S. C. A., Sec. 599, Prohibiting Advances Must be Strictly Construed. Such a Strict Construction Necessitates the View that Any Amount Due a Seaman as Wages, at a Time When a Payment of Money is Made to Such Seaman, Will Not Be Considered an Advance. The Amount Due the Seaman Will be Deducted from the Total Payment so as to Make the Actual Advance on Future Earnings the Difference Between the Amount Due and the Amount Paid.

Supreme Court of the United States

OCTOBER TERM, 1949.

No. ....

PETROS MALEURIS, CHRISTOS KAKOULIDIS, ATHANASIOS SARDIS, DIDNSIOS MBITROS, ZEPOS VORDONIS, KOST RAMFOS, EFSTRAZTIOS KORTESIS, DIMITRIOS KALOGERAS, DIMITRIOS ASPROGERAKAS, NICKOS SKIAFOS,

versus

ANTHONY G. PAPADAKIS, AS OWNER, MICHAEL PILIAROS, HIS AGENT, LEONARDOS CAPPARIS, AS MASTER, ALL BEING INTERESTED IN THE OPERATION OF THE STEAMSHIP VIRGINIA.

On Application for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

Brief in Support of Cross-Petition for Writ of Certiorari.

STATEMENT.

The Appellate Court found on appeal that the libellants were entitled to recover advances made prior to the

last voyage on which they were employed aboard the steamship VIRGINIA, and in this respect the decree of the District Court of the United States for the Eastern District of Virginia was reversed.

The amount of advances made on the last voyage during which the libellants were aboard the steamship VIRGINIA was $1,650.00. This amount has been paid by the respondents to the respective parties claiming the same.

It is conceded by all parties that only four of the libellants are involved in any claim for advances prior to January 15, 1948, the date of the beginning of the last round voyage on which the libellants were aboard the ship. These four men are Sardis, Ramfos, Asprogerakas, and Vordonis. The total of their claims for voyages prior to January 15, 1948, according to their brief is $1,880.66, without considering the right of the respondents to deduct taxes from the amounts earned by the libellants (Libellants App. Note 5).

The voyages on which the four libellants claim advances date back to August, 1947, eight months prior to the time when the libellants filed suit in the District Court of the United States against the respondents. Neither in their original nor their supplemental libel did the libellants make any claim for advances under Title 46, U. S. C. A., Sec. 599 (Resp. App. 43-47).

Under the Greek Collective Agreement of September 2, 1943, the round voyage is the unit of time for which Greek seamen are employed (Resp. App. 65). The wage accounts produced by the four libellants show a settlement of accounts at the conclusion of each round voyage. There is not the slightest showing of any unfair dealing in the settlement of the accounts between the libellants and the respondents. The four libellants in each case accepted the account as a proper settlement of the amount due for their services, and re-shipped for another voyage.

The statute under consideration in this case is known as Title 46, U. S. C. A., Section 599, and provides as follow:

"ADVANCES AND ALLOTMENTS:

(a) It shall be unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than $25 nor more than $100, and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. The payment of such advance wages or allotment, whether made within or without the United States or territory subject to the jurisdiction thereof, shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than $500.

(b) It shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages he may earn to his grand-parents, parents, wife, sister, or children, or for deposits to be made in an account opened by him and maintained in his name either at a savings bank or a United States postal savings depository subject to the governing regulations thereof.

(c) No allotment shall be valid unless in writing and signed by and approved by the shipping commissioner. It shall be the duty of the said commissioner to examine such allotments and the parties to them and enforce compliance with the law. All stipulations

for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement and shall state the amounts and times of the payments to be made and the persons to whom the payments are to be made, or by directing the payments to be made to a savings bank or a United States postal savings depository in an account maintained in his name.

(d) No allotment except as provided in this section shall be legal. Any person who shall falsely claim to be such relation; as above described, or to be a savings bank or a United States postal savings depository and as such an allottee of the seaman under this section shall for every such offense be punished by a fine not exceeding $500 or imprisonment not exceeding six months, at the discretion of the court.

(e) This section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation.

The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with.

(f) Under the direction of the Secretary of Commerce the Director of the Bureau of Marine Inspection and Navigation shall make regulations to carry out this section. This section shall not apply to fishing or whaling vessels or yachts. * * *."

ARGUMENT.

I. THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT CONSTITUTES A DECISION ON AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE SETTLED BY THIS COURT.

By way of background we desire to call attention to the fact that a large percentage of the exports from the United States of America to foreign ports is carried in ships owned by citizens of Greece. The Appellate decision which we now seek to have reviewed would not only disrupt the operation of these Greek vessels, but would have the effect of creating an economic hardship which could probably not be borne by the various Greek owners engaged in the shipping business.

Since the decision handed down by the United States Court of Appeals for the Fourth Circuit on May 17, 1948, the owners of the Greek vessels have been beseiged by numerous demands of Greek seamen for the payment of advances which they claim have been paid to them during the time that they served aboard the various Greek vessels. Some of the claims are years old. The Greek owners, relying on the Greek customs and law requiring advances, have, in good faith, complied over the years with the demands of the Greek seamen to pay the same. The numerous demands at this time leave the owners and operators of Greek vessels completely at the mercy of seamen who, after demanding and accepting the advances, now choose to claim that the same were paid in violation of the laws of the United States and consequently that they are entitled to be paid a second time for their services.

II. THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT ERRED IN ALLOWING THE LIBELLANTS, SARDIS, RAMFOS, ASPROGERAKAS AND VORDONIS TO RECOVER ADVANCES MADE PRIOR TO THE LAST VOYAGE.

This argument is limited to (1) a brief discussion of the errors or oversights which were committed in the

United States Court of Apepals for the Fourth Circuit, and (2) the reasons why advances prior to the last voyage should not be allowed.

A. *The Duration of Engagement of Greek Seamen is One Round Voyage and the Accounts of the Libellants Were Settled on That Basis. There Was no Indication of Bad Faith in the Settlement of the Accounts in question.*

Clause C of the Collective Agreement under the heading "Duration of Engagement" provides as follows:

> "Seamen will sign on for a full round voyage (e. g., from and back to the United Kingdom) * * *" (Resp. App. 65).

The accounts produced by the libellants show that pay periods were divided into voyages of approximately one month's duration. The accounts were settled at the completion of each voyage and were accepted by both the libellants and respondents in good faith as the fair and just and full compensation to be paid by the respondents to the libellants for their services (Libellants App. Note 5). This good faith payment clearly constitutes an account settled.

There has been no showing of bad faith by the evidence. In the words of the District Court:

> "In the instant case there is not the slightest intimation of overreaching or unfair dealing in the settlement of the wage accounts, including the advances charged." 1948 AMC 1721, 1725 (Resp. App. 54).

B. *In the Absence of Bad Faith or Fraud the Settlement of Accounts Between the Libellants and the Respondents Should Not be Set Aside.*

The Appellate Court in its opinion of May 17, 1949, stated:

> "It is clear that advances made in violation of this section may not be credited against wages due the seamen for the voyage. *Lakos* v. *Saliaris, supra,* 4 Cir., 116 F. (2d) 440. And it seems equally clear that 'good cause' for setting aside a wage settlement or even a release given by a seaman in a settlement for wages, as provided by 46 U. S. C. A. 597, is that the settlement does not include the full amount due after the advances forbidden by statute are eliminated." 175 Fed. (2d) 730, 733.

The Court of Appeals based its action in setting aside a settled account on the ground that "good cause" for setting aside was shown by the appearance of the word "advances" in the wage accounts of the four libellants. It is respectfully submitted that the setting aside of a release must be based on fraud or unfair dealing, neither of which exists in this case. The four libellants made no complaint at the time of the settlement of their account. Nor did they complain in their testimony and evidence which was produced at the trial of this case. It is significant to note that their testimony shows they demanded the advances which were given to them. They insisted on their rights to advances under the Greek law (See excerpts from testimony of libellants Vordonis and Asprogerakas, Respondents App. 111, 112).

Not even in the original or supplemental libel did they make demands for such advances. The only pleading which claimed such advances was a motion filed in the possessory libel suit which was signed by proctors and not by the libellants themselves (Resp. App. 48).

Clause P of the Collective Agreement of September, 1943, under heading "Advances, when pay starts, payment of wages" provides a regular schedule of advances (Resp. App. 66). The Circuit Court of Appeals had the following to say concerning this point:

> "The fact that wages of prior voyages were not specifically claimed in the libels originally filed is not sufficient ground for denying this relief. The matter was fully considered by the Court below; and an amend-

ment of the pleadings should have been allowed if deemed necessary. Seamen are wards of the admiralty and are not to be denied, on technical grounds of pleading, relief to which they are entitled." 175 F. (2d) 730, 733.

But at no time in this suit did the libellants seek to amend their pleadings.

Thus under the time honored principle that "Seamen are the wards of the Admiralty" the Appellate Court set aside the judgment of the lower Court and permitted recovery on sums paid to the libellants on remote voyages when (1) no demand was made by the libellants themselves except through motion filed in the possessory libel suit signed by proctors; (2) the settlement of each account had been made and was accepted by both libellants and respondents; and (3) the agreement under which the advances were made was for the sole benefit of the libellants themselves and at their insistence and demand.

In this connection it is interesting to note that the libellants were within the jurisdiction when the motion was made in the possessory libel suit and were available to sign all pleadings. The motion referred to was filed on April 2, 1948. Testimony and depositions were being taken in the case from April 1st through April 10th, in the City of Newport News, Virginia.

Title 46 U. S. C., Section 599 was passed for the benefit of seamen to prevent an abuse which then existed, but which has long been eliminated. These elements of abuse do not now exist and, in fact, the seamen for whose benefit this law was passed were themselves demanding the amounts so paid.

It is further interesting to note that there is at the present time a suit pending in the District Court of the United States for the Eastern District of Virginia instituted by Nicholas Korthinos and sixteen other Greek seamen against the same respondents and the steamship VIRGINIA in which certain claims are made under the Collective Agreement of September 2nd, 1943, for damages for

failure to employ the said Greek seamen upon their application. The information developed from Leonardos Capparis, master of the VIRGINIA reveals that the Greek seamen who requested employment aboard the vessel demanded advances before they would accept employment.

In this connection another interesting question arises:

Can the seamen themselves initiate the proceeding by demanding certain advances and then complain of the owners' or masters' action in complying with their demand? If it is a violation of the statute, can the seamen force their demands for advances as a pre-requisite for work and then claim the benefit of the statute? Are they not just as guilty in such an infraction as the owner or master and are they not deprived now of claiming any benefit?

To grant them payment of such advances is to allow the seamen to profit by their own wrongdoing. Which would be another example of the misapplication of the old principle of "wards of the admiralty". Masters of vessels may not be "wards of the admiralty", but they certainly have some protection from the courts in such matters.

Assuming for the sake of argument that the seamen has a right under the statute, is there anywhere any prohibition against his settling and releasing that right? Is he not at liberty, provided of course no fraud is practiced, to enter into whatever agreement may be fair for the settlement and satisfaction of that right? No argument can be advanced in this case other than that the men have been fairly and equitably dealt with and the very fact that the claims are for advances on prior voyages establishes our position.

Under the circumstances the settled accounts should not be set aside.

The JUNEAU (E. D. La., 1926), 11 Fed. (2d) 430.

The George B. FERGUSON (D. C. Me., 1905), 140 F. 955, 957.

The SAMUEL F. SPRING, 27 F. 764.

The STANDARD (2d Cir.), 103 F. (2d) 437, 439.

C. *The Amounts Claimed as Advances by the Four Libellants on Voyages Prior to January 15, 1948, Must Be Reduced by the Amount of Taxes Which the Respondents Are Obligated, Under the Greek Law, to Deduct From the Libellants' Earnings.*

The decision of the Court of Appeals on May 17, 1949, did not provide that the respondents were entitled to deduct taxes. Referring to the accounts under note 5 of the appendix of the libellants' brief, the amounts listed as "Holdings" represent the taxes deducted at the completion of each round voyage, or when the account was settled. The provision for such deduction, under the Greek law, is similar to the various American withholding tax laws, and it appears clearly that the respondents would be entitled to deduct the amounts of the taxes from the sums which the libellants allege are due them because of advances on the various voyages prior to January 15, 1948.

D. *The Mere Fact That the Word "Advances" Appears in the Pay Accounts of the Four Libellants Does Not Necessarily Mean That the Money Paid Was in Advance on Wages to Be Earned in the Future. It Is Only to Such Payments That Our Statute Applies. The Libellants Must Show by the Evidence That the Amounts Were Paid in Advance of the Time When They Were Earned.*

It is well settled that only advances on future earnings are recoverable. The burden of proof applying to every litigant asserting a claim in the courts of the United States applies to Greek litigants as forcefully as to American citizens. Even if it is conceded, for the purpose of argument, that the libellants are entitled to recover any advances which they prove, the evidence must show unequivocally that the amounts claimed by the libellants were actual advances on future earnings and that the word "advances" was not a mere characterization. In the numerous Greek cases which have been instituted in both the State and Fed-

eral Courts it is established that the word "advances" as used in Greek accounts means any payment of money made by the master of a vessel to the seamen—not only payments of wages to be earned in the future, but also payments of wages which have already been earned at the time of the payment.

E. *The Claim Asserted by the Libellant, Sardis, to An Advance in November, 1947, Is Not Supported by the Evidence.*

Considering the evidence in this case, no claim for such an advance is supported.

At page 112 of the appendix of respondents' brief excerpts from the testimony of Sardis are printed. The libellant, Sardis, states that there was no advance for the November-December settlement of account.

F. *Title 46, U. S. C. A., Section 599, Prohibiting Advances Must Be Strictly Construed. Such a Strict Construction Necessitates the View That Any Amount Due a Seamen as Wages, at a Time when a Payment of Money Is Made to Such Seamen, Will Not Be Considered an Advance. The Amount Due the Seaman Will Be Deducted From the Total Payment So as to Make the Actual Advance on Future Earnings the Difference Between the Amount Due and the Amount Paid.*

The principle of law requiring a strict construction of Federal Statutes is supported by cases too numerous to cite.

From the language of Title 46, U. S. C. A., Sec. 599, it appears clearly that if there is existing at the time of the payment any amount due for wages, then the amount so due is not an advance.

The libellants in this case claim that at the conclusion of a certain voyage ending August 31, 1947, they received a settlement of account. Varying sums were shown by the account to be "advances." Thus, at the conclusion of the first voyage, if the libellants are entitled to go back of that settle-

ment of account, there remained owing to them and due them after the said settlement the amount which they claimed as an advance—this amount they claim as wages. Thus, when the second advance was made during the following voyage ending September, 1947, there was at that time due and owing the libellant the amount of the advance which he claimed from the previous voyage. The second advance would, therefore, be made at a time when there were wages due and owing the seamen. Under a strict construction of the statute the second advance must be reduced by the amount due and owing at the time the same was made.

CONCLUSION.

For the reasons set out herein it is submitted that the question decided by the United States Court of Appeals constitutes a decision on a vitally important and troublesome question of Federal law which has not been, but should be, settled once and for all by this Court. The Court of Appeals erred in its decision as to advances on voyages prior to the current voyage in that it (1) failed to recognize a *bona fide* settlement of account between the parties, and (2) failed to follow the rule requiring strict construction of the appropriate United States Statute.

Respectfully submitted,

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